

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

HARRY N. YOUNG, JR.)

Plaintiff,)

v.)

KEVIN MEYER, in his official capacity,)

as Lt. Governor of the State of Alaska,)

GAIL FENUMIAI, in her capacity as)

Director of the Alaska Division of)

Elections, and the STATE OF ALASKA,)

DIVISION OF ELECTIONS,)

Defendants.)

Case No. 3AN-19-_____ CI

**MOTION FOR EXPEDITED CONSIDERATION
OF PLAINTIFF'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I. INTRODUCTION

Plaintiff Harry N. Young, Jr. hereby moves the Court, in accordance with Rules 65(b) and 77(g) of the Alaska Rules of Civil Procedure, to grant expedited consideration of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. Absent immediate consideration, Defendants will violate the express provisions of Article XI, Section 3 of the Alaska Constitution and Alaska Statute 15.45.090(a). Defendants have entered into an agreement with the proponents of the 19AKBE citizen initiative **before** the lieutenant governor certifies the legality of that initiative application, contrary to the express, sequential provisions of Article XI, Section 3 and AS 15.45.090(a). Defendants' agreement with the initiative is attached as **Exhibit A** to this Motion for Expedited

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Consideration. By the terms of that agreement, found in Paragraph 2 of **Exhibit A**, Defendants have sent the petition booklets to the printers and intend to provide them to the proponents of the 19AKBE initiative today, at the earliest, and sometime around September 23, 2019, at the latest.

Immediate injunctive relief is necessary to prevent Plaintiff Young's immediate irreparable injury of having the State willfully violate the plain terms of Article XI, Section 3 and AS 15.45.090. The Alaska Supreme Court's decisions in *State, Division of Elections v. Metcalf*, 110 P.3d 976, 978-79 (Alaska 2005) and *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273-74 (Alaska 1992) stand for the proposition that the State's inability to enforce its laws causes irreparable damage to the State and its citizens.

Here, Plaintiff asks the Court to uphold this principal and the explicit provisions of Article XI, Section 3 of the Alaska Constitution and AS 15.45.090(a) and enjoin the Defendants from providing printed booklets before the lieutenant governor certifies the legality of the 19AKBE initiative. As demonstrated in the attached Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiff's request meets both the balance-of-the-hardships and probable-success-on-the-merits standards for issuance of immediate injunctive relief. Plaintiff respectfully requests this Court enter the attached Order Granting Motion for Temporary Restraining Order and Setting a Hearing on Motion for Preliminary Injunction to maintain the status quo and Defendants' compliance with the Alaska Constitution.

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II. DISCUSSION

A. Factual Background

Shortly after Lieutenant Governor Meyer's decision declining to certify 19AKBE, Alaskans For Better Elections filed for superior court review of the lieutenant governor's decision that 19AKBE was not in proper form. Plaintiff Alaskans For Better Elections sued Defendants Lieutenant Governor Meyer and the State of Alaska's Division of Elections, which is headed by Director Gail Fenumiai, in Case No. 3AN-19-09704 CI (the "Initiative Application Certification Litigation").¹ Defendants in the Initiative Application Certification Litigation, with the addition of Director Fenumiai, are the State Defendants in this action that Plaintiff Young seeks to enjoin in this action.

On September 9, 2019, Plaintiff Alaskans For Better Elections in the Initiative Application Certification Litigation filed a Stipulation signed by the Defendants in that case that contained, among other things, the following agreement:

Defendants agree to send the 19AKBE signature petition booklets to the printers on September 9, 2019 with the goal of making them available to the Plaintiff by September 23, 2019.²

It is this provision of the Stipulation in the Initiative Application Certification Litigation that Plaintiff Young seeks to enjoin from occurring in this action.

B. Argument

Plaintiff meets all of the requirements of Rule 77(g) to obtain expedited

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¹ See Exhibit A.

² Exhibit A at Paragraph 2.

consideration of his Motion for Temporary Restraining Order and Preliminary Injunction. The Affidavit of Plaintiff is attached to this motion and demonstrates the need for immediate consideration of his request for a temporary restraining order. Without this Court immediately enjoining Defendants from providing printed petition booklets to the proponents of the 19AKBE initiative, Plaintiff Young will suffer the immediate irreparable injury of the Alaska state government willfully violating Article XI, Section 3 of the Alaska Constitution and AS 15.45.090(a).

As the Alaska Supreme Court taught in *Metcalf* and *Kluti Kaah*, Alaskan citizens like Plaintiff Young suffer irreparable injury when the State government is precluded from following the law. Logically, Alaskan citizens like Plaintiff Young suffer the same irreparable injury when their State government flagrantly violates the express terms of the Alaska Constitution and Alaska statutes. Only this Court's grant or expedited consideration can prevent that irreparable injury. Plaintiff has demonstrated specific facts in the attached motion for temporary restraining order and preliminary injunction that show the need for immediate injunctive relief.

Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction also demonstrates that Plaintiff's request for immediate injunctive relief is proper under either the balance-of-the-hardships or probable-success-on-the-merits standard. Plaintiff will suffer irreparable harm absent immediate relief because absent a temporary restraining order Defendants will willfully violate express provisions of the Alaska Constitution and Alaska statutes. That injury is not measurable by monetary damage or remedied by monetary awards. The only thing that can stop that impending irreparable harm is if this

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Court prohibits Defendants from violating Alaska's Constitution and statutes. Defendants will suffer no harm if the injunction is wrongfully entered. As the cases make clear, the requested ultimate relief in this case—requiring the lieutenant governor to certify the legality of the 19AKBE initiative before issuing printed signature booklets—is the status quo for the Division of Elections. Therefore, issuance of injunctive relief will not harm Defendants. Finally, Plaintiff has shown that he will probably succeed on the merits, because of the unambiguous wording and sequential structuring of Article XI, Section 3 and AS 15.45.090(a). Those laws clearly contemplate that the lieutenant governor is required to certify the legality of an initiative petition **before** the Division of Elections may issue printed signature booklets. These plain provisions make Plaintiff's success on the merits almost assured.

C. Requested Ruling As Soon As Possible

Plaintiff requests a ruling on his Motion for Expedited Consideration and the principal Motion for Temporary Restraining Order and Preliminary Injunction as soon as possible, requests that the Court issue a temporary restraining order by the 5:00 p.m. on September 18, 2019, at the latest. The need for an immediate ruling on both motions is due to the terms of Defendants' agreement with the proponents of the 19AKBE initiative in paragraph 2 of **Exhibit A**. Under that agreement, Defendants may provide the proponents of the 19AKBE initiative with printed signature booklets at any time now, thereby willfully violating the express provisions of Article XI, Section 3 of the Alaska Constitution and AS 15.45.090(a).

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D. Required Certifications Under Rule 65(b) and 77(g).

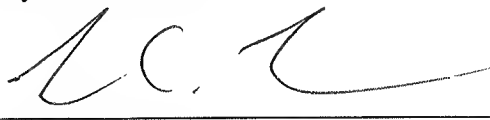
Attached to this Motion for Expedited Consideration is an affidavit of counsel. That affidavit of counsel contains the necessary certifications showing proof of service on opposing counsel via email contemporaneous with Plaintiff's filing of his complaint, motion for temporary restraining order and preliminary injunction, and motion for expedited consideration.

III. CONCLUSION

For the foregoing reasons, Plaintiff Young respectfully requests the Court grant immediate expedited consideration of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and to issue an order granting that motion forthwith, and by 5:00 p.m. on September 18, 2019, at the latest.

DATED at Anchorage, Alaska this 18th day of September, 2019.

HOLLAND & KNIGHT LLP
Attorneys for Plaintiff

By: 

Matthew Singer
Alaska Bar No. 9911072
Lee C. Baxter
Alaska Bar No. 1510085

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Scott M. Kendall
Alaska Bar No. 0405019
Jahna M. Lindemuth
Alaska Bar No. 9711068
Holmes Weddle & Barcott, P.C.
701 West 8th Avenue, Ste. 700
Anchorage, AK 99501
Phone: 907.274.0666
Fax: 907.277.4657

2019 SEP -9 PM 2:39
CLERK TALL COURT
BY: DEPUTY CLERK

Attorneys for Plaintiff Alaskans for Better Elections

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS,)

Plaintiff,)

v.)

KEVIN MEYER, LIEUTENANT)
GOVERNOR OF THE STATE OF)
ALASKA and the STATE OF ALASKA,)
DIVISION OF ELECTIONS,)

Defendants.)

Case No. 3AN-19-09704 CI

STIPULATION

Plaintiff and Defendants, by and through counsel, hereby agree, and request that the court approve, the following stipulated order:

1) Plaintiff has reviewed and does not object to the Division of Election's summary for the Alaska Better Elections Initiative ("19AKBE") that will accompany the petition booklets under AS 15.45.090(2).

2) Defendants agree to send the 19AKBE signature petition booklets to the printers on September 9, 2019 with the goal of making them available to the Plaintiff by September 23, 2019.

3) Plaintiff acknowledges that the Defendants are willing to move forward prior to the merits of the case being decided because application of the single-subject rule is the only disputed issue in the case, which applies to an initiative as a whole. Plaintiff also agrees to post a bond in the amount of \$1,500.00 to cover the costs of the petition booklets.

4) The parties anticipate an appeal to the Alaska Supreme Court, regardless of the court's decision. In order to promptly decide the legal issues of the case and provide sufficient time for consideration by the Alaska Supreme Court prior to next year's election season, the parties have agreed to the following briefing schedule and request for an expedited decision:

- a. September 30, 2019 both parties file Cross-Motions for Summary Judgment;
- b. October 21, 2019 both parties file Responses to the Cross-Motions;
- c. Oral argument is requested for the week of October 28;
- d. An expedited decision from the court is requested by December 1, 2019.

SEP 09 2019

Date: 9/9/19

HOLMES WEDDLE & BARCOTT, P.C.
Attorneys for Plaintiff

By: [Signature]
Scott M. Kendall
Alaska Bar. No. 0405019
Jahna Lindemuth
Alaska Bar. No. 9711068

Date: 9/9/19

ATTORNEY GENERAL'S OFFICE
Attorneys for Defendants

By: [Signature]
Cori Mills
Alaska Bar No. 1212140
for: Margaret Paton-Walsh
Alaska Bar No. 0411074

ORDER

Having considered the proposed stipulated order, IT IS SO ORDERED that the stipulation is approved. Oral argument will occur at 9:00 am on Nov. 1, 2019 in Courtroom 301.

DATED at Anchorage, Alaska this 10th day of September, 2019.

[Signature]
Yvonne Lamoureux
Superior Court Judge

I certify that on 9-10-19
a copy was mailed to each of the following
at their address of record: S. Lindemuth/S. Kendall,
C. Mills/M. Paton-Walsh

[Signature]
Judicial Administrative Assistant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

HARRY N. YOUNG, JR.,)

Plaintiff,)

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KEVIN MEYER, in his official capacity,)

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GAIL FENUMIAI, in her capacity as)

Director of the Alaska Division of)

Elections, and the STATE OF ALASKA,)

DIVISION OF ELECTIONS,)

Defendants.)

Case No. 3AN-19-_____ CI

NOTICE OF FILING UNSIGNED AFFIDAVIT OF PLAINTIFF

Plaintiff Harry N. Young, Jr. hereby gives notice that the Affidavit he has submitted with Plaintiff's Motion for Expedited Consideration and Plaintiff's Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction is unsigned. Plaintiff retained his counsel on September 17, 2019, and had a medical appointment early in the morning on September 18, 2019, that prevented him from signing his Affidavit prior to filing. Following Plaintiff's appointment, he will be stopping by his counsel's office to sign his Affidavit, and the undersigned will file the signature page later on September 18, 2019.

///

///

///

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DATED at Anchorage, Alaska this 18th day of September, 2019.

HOLLAND & KNIGHT LLP
Attorneys for Plaintiff

By: 

Matthew Singer
Alaska Bar No. 9911072
Lee C. Baxter
Alaska Bar No. 1510085

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GAIL FENUMIAI, in her capacity as)

Director of the Alaska Division of)

Elections, and the STATE OF ALASKA,)

DIVISION OF ELECTIONS,)

Defendants.)

Case No. 3AN-19-_____ CI

AFFIDAVIT OF HARRY N. YOUNG, JR.

STATE OF ALASKA)

) ss.

THIRD JUDICIAL DISTRICT)

I, Harry Newton Young, Jr., being duly sworn, depose and state as follows:

1. I have been a resident of Alaska for nearly 30 years, since January 1, 1990.

I retired as a Major with the United States Air Force and presently reside in Eagle River, Alaska.

2. I am a registered voter and Precinct Leader in District 14, Alaska Republican Party.

3. I understand that the Division of Elections is intending to release signature booklets for a ballot initiative involving "ranked order primaries" and other election

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changes. This initiative has not been certified by the Lt. Governor, as is required by Article XI of the Alaska Constitution.

4. Article XI, Section 3 of the Alaska Constitution states: "After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors." The Constitution dictates a specific sequence of events and does not allow for petitions to be issued by the Division of Elections before the Lt. Governor certifies the initiative.

5. I believe that our framers selected the words of our Constitution carefully and that our government has a heightened duty to follow the words of the Constitution. If public officials are free to simply make up rules as they go along, without regard to what our Constitution and laws say, then our system of laws will become meaningless and will eventually result in tyranny.

6. The Division of Elections' actions in agreeing to issue the signature booklets in a manner that violates the Constitution is unfair to me and all other voters who rely on the State to follow the enacted laws. This action will create confusion; it will set a bad precedent; and it will lead the State down a slippery slope where the state government may feel free to ignore other terms of our Constitution.

7. I believe that an injunction is the only appropriate remedy to halt this violation of the Alaska Constitution and is the only remedy that would address the harm that this action will cause to Alaska voters. A monetary award by a court months from now will do nothing to remedy the State's violation of the laws it is required to enforce and uphold.

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AFFIDAVIT OF HARRY N. YOUNG, JR.
YOUNG V. MEYER, FENUMIAI, ET AL.
CASE NO. 3AN-19-_____ CI

PAGE 2 OF 3

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Harry N. Young, Jr.

SUBSCRIBED AND SWORN to before me this _____ day of September, 2019,
at Anchorage, Alaska.

Notary Public in and for Alaska
My Commission Expires: _____

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AFFIDAVIT OF HARRY N. YOUNG, JR.
YOUNG V. MEYER, FENUMIAI, ET AL.
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

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DIVISION OF ELECTIONS,)

Defendants.)

Case No. 3AN-19-_____ CI

AFFIDAVIT OF COUNSEL

STATE OF ALASKA)

) ss.

THIRD JUDICIAL DISTRICT)

I, Lee Baxter, being first duly sworn, depose and state as follows:

1. I am an attorney at the law firm of Holland & Knight LLP. Matt Singer and I represent Plaintiff Harry N. Young, Jr. in the above-captioned litigation.

2. Yesterday at 4:07 p.m. Alaska time, my fellow attorney Matt Singer emailed to Attorney General Kevin Clarkson, Lieutenant Governor Kevin Meyer, and Director of the Division of Elections Gail Fenumiai. He advised that we intended to file a citizen lawsuit on September 18, 2019, to halt the Division of Elections from providing printed ballot petitions to the proponents of the 19AKBE initiative. That email provided legal analysis showing that the Division of Election's issuance of ballot petitions in advance of

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the lieutenant governor's certification of the initiative application would be a blatant violation of Article XI, Section 3 of the Alaska Constitution and AS 15.45.090(a). That note also demanded that each refrain from releasing the printed booklets before we have a chance to seek court review of this matter. A true and accurate copy of this email is attached to this affidavit as **Exhibit 1**. We have not received any response from Defendants to this note but have confirmed that they are aware of our intention to file this injunction motion the morning of September 18, 2019.

3. Contemporaneous with filing Plaintiff's Complaint, Motion for Temporary Restraining Order and Preliminary Injunction, and Motion for Expedited Consideration and all associated exhibits and proposed orders, I am emailing all of the same documents to each of the Defendants at their publically available state email addresses and calling each office to advise of the filing of these pleadings. We have also provided copies to Attorney General Clarkson.

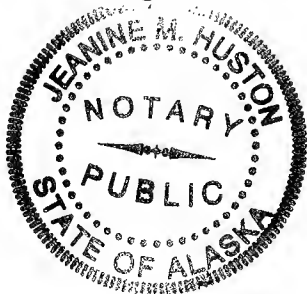
FURTHER AFFIANT SAYETH NAUGHT.

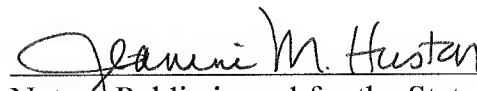


Lee Baxter

SUBSCRIBED AND SWORN TO before me this 18th day of September, 2019,

at Anchorage, Alaska.




Notary Public in and for the State of Alaska
My Commission Expires: 1.31.2020

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Huston, Jeanine M (ANC - X56335)

From: Singer, Matt (ANC - X56318, POR - X56318)
Sent: Tuesday, September 17, 2019 4:07 PM
To: gail.fenumiai@alaska.gov; kevin.meyer@alaska.gov; kevin.clarkson@alaska.gov
Cc: Baxter, Lee C (ANC - X56313)
Subject: Unlawful Ballot petitions for "better elections" initiative

Dear Lt Governor Meyer, Director Fenumia and Attorney General Clarkson,

We intend to file a citizen lawsuit tomorrow to seek a temporary restraining order to halt the Division of Elections from issuing ballot petitions for the "better elections" initiative. Issuance of ballot petitions in advance of any certification by the Lt. Governor would be a blatant violation of the Alaska Constitution.

Article XI, Section 3 of the state constitution says: "**After** certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors." Likewise, AS 15.45.090 provides "***if the application is certified***, the lieutenant governor shall prepare a sufficient number of sequentially numbered petitions..."

Thus, under both the Alaska Constitution and Alaska Statute, the Lt. Governor has to first certify the initiative, and next prepare the petition. The Division does not have the discretion to deviate from the constitution and issue petition booklets before the Lt. Governor certifies an initiative. We understand that the Department of Law entered into a stipulation with the ballot sponsors that contemplates an early issuance of the petitions, but the stipulation is invalid because it so plainly violates the controlling language in our state constitution.

We demand that you refrain from releasing the signature booklets tomorrow and until a court has the opportunity to review this matter on an expedited basis. I will forward you copies of our complaint and motion for temporary restraining order tomorrow, and we will ask the court to take immediate action.

Presumably, you each took an oath to uphold the Alaska Constitution, and that oath should guide your actions with regard to this matter. Thank you for your prompt attention.

Sincerely,

Matt Singer | Holland & Knight

Partner, Alaska & Oregon

Holland & Knight LLP

420 L Street, Suite 400 | Anchorage, Alaska 99501

111 SW 5th Avenue, Suite 2300, Portland, Oregon 97204

Phone 907.263.6318 | Mobile 907.830.0790

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THIRD JUDICIAL DISTRICT AT ANCHORAGE

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Defendants.)

Case No. 3AN-19-_____ CI

**ORDER GRANTING MOTION FOR EXPEDITED CONSIDERATION
OF PLAINTIFF'S MOTION FOR TRO AND PRELIMINARY INJUNCTION**

The Court, upon careful consideration of Plaintiff's Motion for Expedited Consideration of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction ("Plaintiff's Motion"), hereby **GRANTS** Plaintiff's Motion.

IT IS HEREBY ORDERED that this Court will immediately review and consider Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and will issue an order on that motion as soon as possible. Defendants have entered into an agreement to provide printed petition booklets for a proposed ballot initiative. Plaintiff has made a substantial showing that such conduct would violate the express provisions of Article XI, Section 3 of the Alaska Constitution and AS 15.45.090(a). Therefore, the Court

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will review and promptly issue its order on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction.

DATED at Anchorage, Alaska this _____ day of September, 2019.

Superior Court Judge

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ORDER GRANTING MOTION FOR EXPEDITED CONSIDERATION OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION
YOUNG V. MEYER, FENUMIAI, ET AL.
CASE NO. 3AN-19-_____ CI

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